Senate Finance Committee, Committee on Ways and Means, and Joint Committee on Taxation:

Small exporters need your help in retaining capital gain treatment for dividends received from an IC-DISC. Section 302 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003 provides lower capital gain rates applicable to dividends received by individuals. Section 7 of the Tax Technical Corrections Act of 2006 states that Section 302 does not apply to dividends received from a DISC after September 29th, 2006. The attached bill mark-up striking "paid out of the corporation's accumulated DISC income or is" would benefit only small exporters and still allow taxing the deemed dividends resulting from exports exceeding $10 million as ordinary income.

Many small companies had migrated, or are in the process of migrating, from ETI to IC-DISC in order to remain competitive in the export markets. The original deferral benefit of the IC-DISC (albeit with an interest charge) remains available. However, the capital gain rate treatment for DISC dividends is an effective export incentive unchallenged by the WTO.

Our Position – Congress Should Act to Protect the Capital Gain Treatment for DISC Dividends

- The rate benefit is an effective export incentive
  - Small and medium sized manufactures deserve our support
  - American jobs are at stake
  - Trade imbalance needs fixing
  - Difficult for WTO to successfully challenge
  - Phase-out of ETI at end of 2006 is a burden
  - Deferral with an interest charge is not a permanent incentive
  - Even if some believe the DISC rate benefit is an unintended result, an effective export incentive now exists and needs protection

- Stop potentially abusive transactions and expansion of beneficiaries
  - "Double-dip" of both ETI and DISC based on Section 943(h) repeal
  - Factoring of export receivables without proper economic substance
    - Manufacturing/Production activity should drive export incentives
    - Other DISC income generation should be highly scrutinized
  - Large taxpayers using DISC
    - Do not apply capital gain rate to DISC dividends exceeding $10,000,000 in a tax year

        - Would prevent large taxpayer benefits
    - Retain the rate benefit for the small and medium sized taxpayers for which the DISC was intended
        - These companies are creating the good American jobs

- Do not punish taxpayers for failure to exclude the DISC dividend from "qualified dividend income" in the 2003 legislation
    - Technical correction is too late
    - Taxpayers have made DISC elections based on current law
    - A technical correction to an incentive that works is not necessary

Bottom Line - Capital Gain Treatment for DISC Dividends is Good Tax Policy

Sincerely,

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